

REMARKS

Claims 24, 25, 27, 28, 33, 34, 39 and 40 are pending.

Claims 24, 25, 33 and 34 have been rejected under 35 U.S.C. 103 as being unpatentable over Vallabh in view of Khan (It is noted that the Examiner also addressed claim 39 in this rejection). Claims 27 and 28 have been rejected under 35 U.S.C. 103 as being unpatentable over Vallabh in view of Khan and Joseph. (It is noted that the Examiner also addressed claim 40 in this rejection).

The rejections are respectfully traversed for the following reasons.

Independent claim 24 recites a system for selling goods having multiple purchase obtaining facilities for enabling customers to obtain pre-ordered purchases, comprising:

a storage facility for storing the goods,

an ordering device for enabling a customer to place a purchase order, and

a telecommunication system responsive to the purchase order placed by the customer for requesting an ordered purchase to be delivered from the storage facility to a selected purchase obtaining facility,

the selected purchase obtaining facility comprising:

multiple purchase pick-up points,

a service area for keeping purchases delivered from the storage facility,

an identification station for receiving identification (ID) data provided by the customer arriving at the selected purchase obtaining facility to obtain the ordered purchase, and

a control system configured for:

receiving the ID data from the identification station,

in response to the ID data received from the identification station, automatically assigning a purchase pick-up point of the multiple purchase pick-up points to the customer,

determining purchase information on the purchase order placed by the customer based on the ID data provided by the customer,

based on the determined purchase information, issuing a request for delivery the ordered purchase from the service area to the purchase pick-up point assigned to the customer, and

automatically releasing the purchase pick-up point assigned to the customer when the ordered purchase is obtained.

The Examiner admits that Valabh does not disclose automatically releasing the purchase pick-up point assigned to the customer when the ordered purchase is obtained. Khan (cols. 7 and 8) is relied upon for disclosing this feature.

Considering Khan, the reference discloses an electronic toll collection (ETC) system that has a first axle audit mechanism 28 (FIG. 1) employed to detect toll lane entry of the vehicle 2 and vehicle configuration, i.e. the number of axles (col. 4, lines 65-68). A second axle audit mechanism 29 may be employed to detect the vehicle exit (col. 6, lines 34-35).

As shown in the block-diagram in FIG. 7, when driver forwards vehicle out of exit area, the second audit mechanism 29 detects vehicle exit (step 738 and col. 7, lines 61-63). In step 740, the ETC system debits the ETC account and closes the transaction (col. 7, lines 63-65).

Accordingly, Khan suggests detecting the vehicle exit from the toll station to debit the account and close the transaction.

Hence, the reference does not teach or suggest automatically releasing the purchase pick-up point assigned to the customer when the ordered purchase is obtained, as claim 24 recites.

It is noted that the recent decisions of the USPTO Board of Appeal and Interferences in *Ex parte Smith*, Appeal 2007-1925 (June 25, 2007) and *Ex parte Catan*, Appeal 2007-0820 (July 3, 2007) put forth an obviousness analysis that emphasizes a functional approach based on *Graham v. John Deere* factors. As stated in *Graham v. John Deere Co.* 383 U.S. 1, 13, 148 U.S.P.Q. 459, 465 (1966), obviousness under 35 U.S.C. §103 must be determined by (1) analyzing the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims in issue; (3) resolving the level of ordinary skill in the pertinent art, and (4) analyzing secondary considerations.

It is respectfully submitted that clear differences exist between the combined prior art teachings and the present claims. In particular, even assuming *arguendo* that Valabh is modified to include the Khan's teaching of detecting the vehicle exit from the toll station, the claimed invention would not result for the following reasons.

The combined teachings would not teach or suggest **automatically releasing the purchase pick-up point assigned to the customer when the ordered purchase is obtained**, as claim 24 recites.

In addition, the combined teachings would not teach or suggest **automatically** assigning a purchase pick-up point of the multiple purchase pick-up points to the customer in response to the ID data received from the identification station. It is noted that Vallabh discloses **dynamic** assignment, rather than the assignment performed **automatically in response to the ID data received from the identification station**, as claim 24 requires. Khan does not disclose this feature at all.

Hence, in accordance with the *Graham v. John Deere* obviousness analysis, the subject matter of claim 24 is not obvious over the applied reference combination.

As demonstrated below, some secondary considerations also provide support for non-obviousness of the claimed invention.

It is noted that presently some retailers, such as Circuit City or CompUSA, allow customers to order purchases in advance in order to save time. For a small number of pre-ordering customers, these systems operate quite efficiently. However, during peak periods, when a large number of customers arrive at the same time to pick up their orders, they encounter long waiting lines at check out points and multiple logistics problems caused by delays in delivery individual orders to the check-out points.

The claimed automatic assignment mechanism provides an unexpected improvement over the prior art because it enables the retailer to efficiently operate during peak periods when large number of customers arrived at the same time to obtain pre-ordered purchases.

It is noted that claim 24 requires the control system to automatically assign a purchase pick-up point of the multiple purchase pick-up points to the customer in response to the ID data received from the identification station, and to automatically release the purchase pick-up point assigned to the customer when the ordered purchase is obtained.

As discussed in the specification, as soon as the purchase pick-up point is released from being assigned to one customer, it can be immediately assigned to another customer, and the pre-ordered purchase of that customer can be immediately delivered to the newly assigned point.

Accordingly, the claimed automatic assignment mechanism results in substantial increase in the check-out throughput, enabling the retailer to efficiently serve a large number of pre-ordering customers during peak periods.

Moreover, it is well settled that the discovery of a problem together with the source of the problem constitutes evidence of nonobviousness. *In re Sponnoble*, 405 F.2d 578, 160 USPQ 237 (CCPA 1969). As disclosed in the specification, the present invention addresses “a need for

a check-out arrangement with a throughput sufficiently high to enable customers to avoid waiting in lines even during rush hours.”

Neither Vallabh nor Khan discloses such problem with prior art retail systems and clearly have not identified the source of the problem. Under such circumstances, the problem addressed and solved by the claimed invention constitutes a potent indicium of nonobviousness. *North American Vaccine, Inc. v. American Cyanamid Co.*, 7 F.3d 1571, 28 USPQ2d 1333 (Fed. Cir. 1993); *In re Newell*, 891 F.2d 899, 13 USPQ2d 1248 (Fed. Cir. 1989); *In re Nomiya*, 509 F.2d 566, 184 USPQ 607 (CCPA 1975).

Accordingly, consideration of primary and secondary *Graham v. John Deere* factors clearly indicates that the invention recited in the independent claim 24 is non-obvious over the applied prior art.

In addition, it is respectfully submitted that the dependent claims are also non-obvious over the prior art.

For example, claim 39 recites that the control system is configured for automatically releasing the purchase pick-up point assigned to the customer in response to payment by the customer.

The Examiner relies upon Khan (fig. 8, lines 1-5) for disclosing this feature (as Khan does not have fig. 8, it is clear that the Examiner meant “col. 8, lines 1-5”).

Considering the reference, Khan discloses the gate mechanism 15 that prevents vehicle from exiting the toll station until payment is rendered (col. 8, lines 2-4). Accordingly, Khan does not teach or suggest automatically releasing the purchase pick-up point assigned to the customer in response to payment by the customer.

Further, the Examiner relies upon Josef (col. 2, line 50 – col. 3, line 4) for disclosing the subject matter of claim 40 that recites that the purchase pick-up point is configured to enable the

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customer to inspect the ordered purchase, and the control system is configured for automatically releasing the purchase pick-up point assigned to the customer after the ordered purchase is inspected.

However, Josef disclose the security station positioned near the exit of retail store for comparing the actual weight of a customer's bag with the predicted weight and for deactivating security tags of the purchase items during weighting of the bag (col. 2, line 60-col. 3, line 2).

Hence, Josef also does not disclose automatically releasing the purchase pick-up point assigned to the customer.

In view of the foregoing, and in summary, claims 24, 25, 27, 28, 33, 34, 39 and 40 are considered to be in condition for allowance. Favorable reconsideration of this application is respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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